

Order

Michigan Supreme Court
Lansing, Michigan

December 21, 2010

Marilyn Kelly,
Chief Justice

ADM File No. 2008-18

Proposed Amendment of
Rule 3.501 of the
Michigan Court Rules

Michael F. Cavanagh
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway
Alton Thomas Davis,
Justices

On order of the Court, this is to advise that the Court is considering alternative amendments of Rule 3.501 of the Michigan Court Rules. Before determining whether one of the alternative proposals should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at the following website address: www.courts.michigan.gov/supremecourt/resources/administrative/ph.htm.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

ALTERNATIVE A

Rule 3.501 Class Actions

(A) [Unchanged.]

(B) Procedure for Certification of Class Action.

(1) Motion; Supplemental Motions; Motion for Revocation or Amendment.

- (a) Within 91 days after the filing of a complaint that includes class action allegations, the plaintiff must move for certification that the action may be maintained as a class action.
- (b) The time for filing the motion may be extended by order on stipulation of the parties or on motion for cause shown.

- (c) A party may file a supplemental motion for certification of a class if the circumstances surrounding the initial motion for certification have substantially changed following the filing of the initial motion. A supplemental motion must be filed within 21 days of the date when the party knew or should have known of the changed circumstances.
 - (d) A party may file a motion for revocation or amendment of the certification.
- (2) Effect of Failure to File Motion. If the plaintiff fails to file a certification motion within the time allowed by subrule (B)(1)(a), the defendant may file a notice of the failure. On the filing of such a notice, the class action allegations are deemed stricken, and the action continues by or against the named parties alone. The class action allegations may be reinstated only if the plaintiff shows that the failure was due to excusable neglect.
- (3) Action by Court.
 - (a) Except on motion for good cause, the court shall not proceed with consideration of the motion to certify until service of the summons and complaint on all named defendants or until the expiration of any unserved summons under MCR 2.102(D).
 - (b) The court may allow the action to be maintained as a class action, may deny the motion, or may order that a ruling be postponed pending discovery or other preliminary procedures. The court also may consider a supplemental motion for certification, or a motion to revoke or amend the certification.
 - (c) In an order certifying a class action, the court shall set forth a description of the class.
 - (d) When appropriate the court may order that
 - (i) the action be maintained as a class action limited to particular issues or forms of relief, or
 - (ii) a proposed class be divided into separate classes with each treated as a class for purposes of certifying, denying certification, or revoking a certification.

- (e) If certification is denied or revoked, the action shall continue by or against the named parties alone.

(C)-(I) [Unchanged.]

ALTERNATIVE B

Rule 3.501 Class Actions

(A) [Unchanged.]

(B) Procedure for Certification of Class Action.

(1) Motion.

- (a) Within 91 days after the filing of a complaint that includes class action allegations, the plaintiff must move for certification that the action may be maintained as a class action. A plaintiff is entitled to file one and only one motion for class certification.

- (b) The time for filing the motion may be extended by order on stipulation of the parties or on motion for cause shown.

(2) Effect of Failure to File Motion. If the plaintiff fails to file a certification motion within the time allowed by subrule (B)(1), the defendant may file a notice of the failure. On the filing of such a notice, the class action allegations are deemed stricken, and the action continues by or against the named parties alone. The class action allegations may be reinstated only if the plaintiff shows that the failure was due to excusable neglect.

(3) Action by Court.

- (a) Except on motion for good cause, the court shall not proceed with consideration of the motion to certify until service of the summons and complaint on all named defendants or until the expiration of any unserved summons under MCR 2.102(D).
- (b) The court may allow the action to be maintained as a class action, may deny the motion, or may order that a ruling be postponed pending discovery or other preliminary procedures. After granting a motion to certify a class action, the court may amend or revoke the certification.

- (c) In an order certifying a class action, the court shall set forth a description of the class.
- (d) When appropriate the court may order that
 - (i) the action be maintained as a class action limited to particular issues or forms of relief, or
 - (ii) a proposed class be divided into separate classes with each treated as a class for purposes of certifying, denying certification, or revoking a certification.
- (e) If certification is denied or revoked, the action shall continue by or against the named parties alone.

(C)-(I)[Unchanged.]

Staff Comment: The proposed amendment of MCR 3.501(B) in Alternative A would require a change in circumstances to have occurred that would allow a party to file a supplemental motion for certification of a class within 21 days of the party's knowledge of the changed circumstances. The proposed amendment also would allow a party to file a motion for revocation or amendment of the certification. The court as well would be allowed to consider supplemental motions to recertify and revoke or amend the certification. The proposed amendment of MCR 3.501(B) in Alternative B would clarify that only one motion for certification may be brought, and that once granted, the certification may be amended or revoked.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by April 1, 2011, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2008-18. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 21, 2010

Corbin R. Davis
Clerk